

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Comcast of Massachusetts III, Inc.

*Complainant,*

v.

D.T.C. 14-2

Peabody Municipal Light Plant and Peabody  
Municipal Lighting Commission

*Respondents.*

**OPPOSITION OF COMCAST TO  
RESPONDENTS' JOINT MOTION FOR RECONSIDERATION**

Comcast of Massachusetts III, Inc. ("Comcast") hereby opposes the Joint Motion for Reconsideration of a Portion of the Hearing Officer's Order on Hearing Procedure and Motion to Intervene ("Motion for Reconsideration") in the above captioned proceeding, filed by Peabody Municipal Light Plant ("PMLP"), Peabody Municipal Lighting Commission ("PMLC") and Ashburnham Municipal Light Plant ("AMLP") (collectively the "Respondents").

As explained below, the Motion for Reconsideration is both procedurally infirm and fails to meet the Department's well-established criteria for reconsideration. The motion should be denied.

**I. The Motion is Procedurally Infirm**

Pursuant to the Department's regulations, rulings and decisions of a hearing officer shall remain in full force and effect unless and until set aside or modified by the Commission. *See* 220 CMR 1.06(6)(d)(2). The Respondents' Motion for Reconsideration is not the appropriate vehicle

to change or modify the Hearing Officer's June 23 Order on Hearing Procedure. The Respondents argue that the Hearing Officer's ruling is an error — in which instance the appropriate vehicle for review is an appeal to the Commission, not a motion for reconsideration. *See* 220 CMR 1.06(6)(d)(3).

## **II. The Motion Fails to Meet the Criteria for Reconsideration**

Even if the Hearing Officer were to consider the Motion for Reconsideration appropriately filed, Respondents fail to meet the criteria for reconsideration. The Department repeatedly has held that a motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact on the decision; it should not attempt to reargue issues considered and decided in the main case. *AT&T CSC, Inc., et al. v. Board of Selectmen of the Town of Westford*, CTV 02-5, Order on Motions for Reconsideration at 3-4, *citing Commonwealth Electric Co.*, D.P.U. 92-3C-1A at 3-6 (1995); *Boston Edison Company*, D.P.U. 90-270-A at 3 (1991); *Boston Edison Company*, D.P.U. 1350-A at 4 (1983). A motion for reconsideration may also be based on an argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Co.*, D.P.U. 90-261-B at 7 (1991); *New England Telephone & Telegraph Company*, D.P.U. 86-33-J at 2 (1989); *Boston Edison Company*, D.P.U. 1350-A at 5 (1983). Finally, it is well settled that Motions for Reconsideration are to be granted rarely. As the Department has held consistently — and as even the Respondents concede — motions for reconsideration are to be granted only in “extraordinary circumstances.” *City of Lowell*, D.P.U. 12-124 at 18 (2013).

In their motion, the Respondents merely reargue issues already considered and evaluated by the Hearing Officer. Nothing in the Hearing Officer's Order rises to such a level as requiring

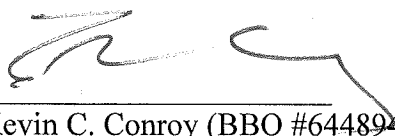
a “fresh look” at the record. Rather, the Hearing Officer merely ordered an efficient procedural schedule, under which the threshold legal issue — the standard of review — would be decided first. All of the legal, factual and evidentiary issues raised by the Respondents’ Motion for Reconsideration can still be properly argued within the parameters set forth by the Hearing Officer’s Order. In sum, nothing in the Respondents’ motion constitutes an “extraordinary circumstance” warranting reconsideration of the Hearing Officer’s ruling.

The Massachusetts Formula as set forth in D.P.U./D.T.E. 97-82, *Cablevision of Boston Co. et al. v. Boston Edison Co.*, 1998 WL 35235111 (Apr. 15, 1998), and D.T.E. 98-52, *A-R Cable Servs. Inc., et al. v. Mass. Elec. Co.* (Nov. 6, 1998) is the standard under G.L. c. 166, § 25A that governs rates for all attachments on utility poles owned by all types of utilities in the Commonwealth. The Hearing Officer’s June 23 Order provides the Respondents a fair and full opportunity to argue that the Massachusetts Formula does not apply to municipal light plants and municipal lighting commissions. The Hearing Officer should not revisit this procedural ruling.

### **III. Conclusion**

On the basis of the foregoing, Comcast respectfully requests that the Respondents’ Motion for Reconsideration be DENIED.

Respectfully submitted,



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*Attorneys for Comcast of Massachusetts III, Inc.*

Dated: July 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2014, I served the Opposition of Comcast to Respondents' Joint Motion for Reconsideration by personal delivery and first-class U.S. Mail to the attached Service List in accordance with the requirements of 220 CMR 1.05.

A handwritten signature in black ink, appearing to read 'K. Conroy', is written above a horizontal line.

Kevin Conroy